

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:16-cr-0187-SEB-MJD
)	
ANTHONY DAVIS,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On June 17, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on June 4, 2019 and a supplemental petition filed on June 14, 2019. Defendant Davis appeared in person with his appointed counsel, Gwendolyn Beitz. The government appeared by Peter Blackett, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Angela Smith.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Davis of his rights and provided him with a copy of the petition. Defendant Davis orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Davis admitted violation numbers 1, 2, 3, and 4. [Docket Nos. 116 and 122.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“You shall not use or possess any controlled substances prohibited by applicable state or federal law.”</p> <p>On April 25, 2019, Mr. Davis submitted a urine specimen that yielded positive for cannabinoids. When confronted about the positive test on April 30, 2019, he admitted using marijuana by going out to the club with his brother and friends.</p>
2	<p>“You shall maintain lawful full time employment.”</p> <p>Mr. Davis was released from the Bureau of Prisons and began supervision on April 16, 2019. At his intake appointment he was unemployed. He has remained unemployed and failed to follow through with the probation officer's referral to PACE/OAR, an employment service. Mr. Davis seems to be making little to no effort in securing employment.</p>
3	<p>“You shall participate in a substance abuse treatment program approved by the probation officer.”</p> <p>Following the positive drug screen submitted on April 25, 2019, the offender was referred to Addiction Counseling and Educational Services through Recovery Works for an assessment and treatment services due to the location being nearby his residence. He was given the referral on April 30, 2019. On May 20, 2019, this officer received information from the treatment agency indicating Mr. Davis left them a message but they tried calling him back on several occasions and could not reach him. The probation officer then instructed him to call the agency after which he was set for and assessment on May 22, 2019. On May 24, 2019, this officer was notified by the treatment agency that the offender called them an hour before his appointment and indicated he overslept, at which time he was told his appointment was within the next hour so he could still make it. He stated he needed to go to the doctor; therefore, his appointment was reset to May 28, 2019. On May 28, 2019, this officer received notification from the treatment center indicating the offender again did not show up for his assessment.</p>
4	<p>“You shall not use or possess any controlled substances prohibited by applicable state or federal law.”</p> <p>On June 11, 2019, Mr. Davis submitted a urine specimen which yielded positive for marijuana. He submitted a negative specimen on May 30, 2019.</p>

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade C violation.
- (b) Defendant's criminal history category is III.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 5 to 11 months' imprisonment.

5. The parties jointly recommended a modification to include up to six (6) months on GPS monitoring with curfew.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be modified as follows:

- 1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. (Supervised Release cases only)
- 2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
- 4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
- 5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
- 6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
- 7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.

8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Justification: These conditions are recommended to assist the probation officer in supervising the offender and facilitating re-entry into the community, as well as to promote respect for the law and reduce recidivism.

13. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.
14. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
15. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.

Justification: These conditions will address the defendant's history of substance abuse and hold him accountable to maintaining a sober lifestyle.

16. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may

assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

Justification: The offender has a history of drug use, criminal history consisting of violent offenses, as well as the instant offense is an offense of violence. This condition will assist the probation officer in monitoring compliance and protection of the community.

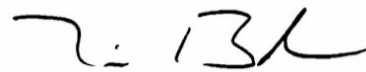
17. You shall be monitored by GPS Monitoring, via a curfew set by the probation officer, for a period of up to six months, to commence as soon as practical, and shall abide by all the technology requirements.

Justification: The offender has a significant history of violence and is not compliant with the following conditions of supervision: employment, substance abuse and treatment services, as well as location monitoring will assist the officer in maintaining consistent contact with the offender in the community

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 06/26/2019



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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